

FCC MAIL SECTION

Nov 23 3 50 PM '92 Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-44

In the Matter of

Amendment of Section 73.202(b), RM-7914
Table of Allotments,
FM Broadcast Stations.
(Hattiesburg, Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 21, 1992; Released: November 23, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 1911 (1992), proposing the allotment of Channel 269C3 to Hattiesburg, Mississippi, as that community's fourth FM broadcast service. The *Notice* was issued in response to a petition filed by Community Broadcasting Company, Inc. ("petitioner"). Petitioner filed comments and reply comments. William Y. Sanford ("Sanford") and Thomas William Hickman, III, Newton Broadcasting Company, Inc., Faulkner/Phillips Media, Inc. and Lou Ward ("The Group") filed separate counterproposals.¹ No other comments were received.

2. Petitioner filed comments supporting its request for the allotment of Channel 269C3 at Hattiesburg, Mississippi. In reply comments petitioner acknowledges the counterproposals filed by The Group and Sanford which suggested the allotment of Channel 226A to Hattiesburg in lieu of Channel 269C3. Petitioner states it has no desire to be drawn into a multi-party proceeding which may take some

time to resolve. Therefore, petitioner contends that providing a new service to Hattiesburg on a Class A channel in a timely fashion is more important than providing a Class C3 channel to the community with the possibility of being tied into another proceeding. Therefore, petitioner indicates it will file an application for Channel 226A at Hattiesburg, if allotted.

3. We believe the public interest would be served by allotting Channel 226A to Hattiesburg, Mississippi, as that community's fourth FM broadcast service. Channel 226A can be allotted to Hattiesburg in compliance with the Commission's spacing requirements at a site 2.5 kilometers (1.5 miles) southwest of the community.² The site restriction will prevent a short spacing to Station WHER, Channel 279C, Hattiesburg, Mississippi.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **January 7, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Hattiesburg, Mississippi	221A, 226A, 279C, 283C1

5. The window period for filing applications for Channel 226A at Hattiesburg, Mississippi, will open on **January 8, 1993**, and close on **February 8, 1993**.

6. IT IS FURTHER ORDERED, That the counterproposal filed by William Y. Sanford IS DISMISSED.

7. IT IS FURTHER ORDERED, That the counterproposal filed by Thomas William Hickman, III, Newton Broadcasting Company, Inc., Faulkner/Phillips Media, Inc. and Lou Ward IS DISMISSED.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by certified mail, return receipt requested a copy of this *Order* to the following:

¹ The counterproposal filed by Sanford requested the allotment of Channel 226A to Hattiesburg, Mississippi, as the community's fourth or fifth FM service. The Group's counterproposal proposes the substitution of Channel 269A for Channel 288A at Waynesboro, Mississippi, substitution of Channel 288C3 for Channel 288A at Bay Minette, Mississippi, substitution of Channel 288C2 for Channel 292A at Newton, Mississippi, substitution of Channel 292C2 for Channel 292A at Petal, Mississippi, allotment of Channel 226A at Hattiesburg, Mississippi, and allotment of Channel 287A at Clara, Mississippi. The counterproposals have not been placed on public notice. Sanford and The Group failed to include an affidavit verifying that the statements contained in the proposals were accurate to the best of the counterproponents' knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of*

Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes ("Abuse of Process"), 5 FCC Rcd 3910, n.41 (1990). Therefore, we believe these rules should be strictly enforced in allocations proceedings. Counterproposals must be technically and procedurally correct at the time of their filing. See *Fort Bragg, California*, 6 FCC Rcd 5817 (1991) and *Report and Order, Broken Arrow and Bixby, Oklahoma and Coffeetown, Kansas*, 3 FCC Rcd 6507 (1988), *recon. denied* 4 FCC Rcd 6981 (1989). Therefore, we will dismiss the counterproposals filed by Sanford and The Group. Even if The Group's counterproposal was procedurally correct, we note that The Group filed a similar counterproposal in MM Docket 91-303. See 6 FCC Rcd 6012 (1991). Final action has not been taken in that proceeding. Further, the license for Station WMFM(FM), Petal, Mississippi, Channel 292A was modified to specify operation on Channel 292C3 and the license for Station WMYQ(FM), Newton, Mississippi, Channel 292A, was modified to specify operation on Channel 250A in MM Docket 90-566, 7 FCC Rcd 4998 (1992), *recon. pending*.

² The coordinates for Channel 226A at Hattiesburg are 31-18-28 and 89-18-07.

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Petal, MS 39465

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Herman Kelly,
President, Newton
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P.O. Box 827
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James H. Faulkner,
Chairman, Faulkner/Phillips
Media, Inc.
P.O. Box 339
Bay Minette, AL 36507

Lou Ward, Petitioner
147 Walters Road
Petal, MS 39465

9. IT IS FURTHER ORDERED, That this proceeding IS
TERMINATED.

10. For further information concerning this proceeding,
contact Kathleen Scheuerle, Mass Media Bureau, (202)
634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau